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June 28, 2010

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Re: Ex Parte Communication: *Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593; AT&T Inc. and BellSouth Corporation Application for Transfer of Control, WC Docket No. 06-74.*

Dear Ms. Dortch:

A service provider may propose rate increases for various reasons: because it has upgraded or improved its product or service, for which it hopes its customers will be willing to pay more; because the costs of providing the service have increased; because demand is greater than supply; or because it is following the industry price leader.

None of these reasons applies in the case of AT&T's upcoming special access rate increases, pre-arranged -- in 2007 -- to take effect on July 1, 2010.[1] To the contrary, the AT&T incumbent local exchange carriers (ILECs) are increasing their interstate special access rates simply *because they can* – there are no competitive market forces sufficiently strong to prevent or limit the scheduled rate increases. Customers such as Sprint cannot "vote with their feet" to object to the scheduled rate increases, because in the overwhelming majority of cases, no competitive

[1] AT&T will increase its Phase II interstate special access rates by 15% or more upon expiration of one of the merger conditions adopted in the AT&T-BellSouth Merger Order (*AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, 22 FCC Rcd 5662 (2007)). *See, e.g.*, Ameritech Tariff FCC No. 2, Section 21.5.2.7(B) and Section 21.5.2.7.1(A). Similar tariff pages were filed by the other AT&T ILECs (SBC, Pacific Bell, Nevada Bell, SNET, and BellSouth).

alternative exists. Even in those few instances in which there is an alternative, the ILEC customers are almost always prevented from selecting an alternative access provider because of the volume and term plan requirements and onerous termination liabilities AT&T imposes.

The record in the special access proceeding is replete with examples of unjust and unreasonable special access rates, generating extraordinarily high, supra-competitive rates of return. If any additional proof were needed, AT&T's remarkable declaration of a massive price increase *three years* before it is to go into effect surely constitutes dispositive evidence that the competition AT&T and other ILECs claim to exist has no impact on prices for such services.

AT&T's scheduled rate increases are particularly galling given its repeated claims that "the prices customers actually pay for special access services have declined across all services and in all areas since 2001."[2] Setting aside for the moment the fact that any special access rate decreases since 2001 were due to regulatory mandates and changes in purchasing patterns rather than competitive pressures,[3] one might well question what impact AT&T's scheduled special access rate increases -- which may cost its subscribers some *$125 million* or more *per year*[4] -- will have on its price trend calculations, and on its special access service subscribers' ability to expand their own broadband networks and service offerings, to hire new employees, and to invest in research and development.

Given this incontrovertible proof that competitive pressures are incapable of disciplining pricing or otherwise constraining the exercise of market power by AT&T and other RBOCs, the Commission must take steps to ensure that special access rates are just and reasonable.

Numerous parties have presented compelling cases for immediate Commission action, including a roll-back of Phase 2 price flex rates to price cap rates, imposition of a special access rate freeze, and placing a moratorium on further grants of pricing flexibility, pending adoption of comprehensive reform of special access regulations.[5] Sprint agrees these interim steps, along

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[2] *See* letter from James Cicconi, AT&T, to Senator Herbert Kohl, July 8, 2009, p. 4. *See also, e.g., ex parte* letter from Frank Simone, AT&T, to Marlene Dortch, FCC, in WC Docket No. 05-25, November 4, 2009, p. 3 of attachment ("prices have fallen consistently for all services at all bandwidths in all areas"); reply comments filed in WC Docket No. 05-25 on August 15, 2007, by AT&T (pp. 23-25), and Verizon (pp. 5-11) ("average" prices for special access have decreased over time).

[3] *See, e.g.,* Sprint's reply comments in WC Docket No. 05-25, filed August 15, 2007, pp. 15-20. Changes in "average" RBOC special access prices have been the result of factors such as the application, between 2001-2003, of a 6.5% productivity factor to price capped rates, to temporary rate freezes and rate reductions resulting from merger commitments, and to the shift to higher capacity special access circuits and to volume/term plans, not to competitive pressures.

[4] In his statement on the AT&T/BellSouth Merger Order, Commissioner Copps estimated (p. 5) that reinstituting price caps throughout AT&T/BellSouth's 22 state footprint "should result in approximately $500 million in savings to competitors" over 4 years.

[5] *See, e.g., ex parte* letters filed in WC Docket No. 05-25 by Karen Reidy, COMPTEL, dated June 1, 2010; Joshua Bobeck and Thomas Cohen on behalf of PAETEC and XO

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with the issuance by August 2010 of any data request the Commission deems necessary, are the minimum steps required to limit the harm that excessive RBOC special access prices cause while the Commission considers how to address this market failure. Sprint urges the Commission, however, not to allow the issue of interim relief to slow down or act as a substitute for comprehensive reform.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced dockets. If you have any questions, please feel free to contact me at (703) 433-3786.

Sincerely,

/s/ Charles W. McKee

Charles W. McKee
Vice President, Government Affairs
Federal and State Regulatory

cc: Sharon Gillett
Ruth Milkman
Paul De Sa
Don Stockdale
Nicholas Alexander

Communications, dated May 28, 2010; Thomas Jones on behalf of tw telecom inc., dated April 23, 2010.